

Special Edition – November 2001

employee plans news

Protecting Retirement Benefits through Educating Customers

EMPLOYEE PLANS RESPONSE TO THE 9/11/2001 TERRORIST ATTACK

Employee Plans has responded to 9/11/2001 with the following disaster relief:

Revenue Procedure 2001-55	Time extended for GUST Remedial Amendment for ALL PLANS to February 28, 2002. Additional extensions are available for those directly affected by the terrorist attack. See below for complete text of the revenue procedure. For Questions/Answers on the extension of the GUST Remedial Amendment Period, see www.irs.gov/ep .
Revenue Procedure 2001-53	Time for performing certain acts postponed. See Section 8 for Employee Benefit Issues.
Announcement 2001-103	Limited relief for defined benefit and money purchase pension plans with respect to certain penalties for failure to file complete and accurate Forms 5500 that are due on or before October 15, 2001.
DOL News Release No. 01-36	Extends deadline to file Form 5500s and Form 5500-EZs for certain plan sponsors affected by the terrorist attack. Further information may be found at www.dol.gov/dol/pwba .
Notice 2001-68	This notice supplements the tax relief granted in Notice 2001-61 for taxpayers affected by the terrorist attack by clarifying and expanding the definition of affected taxpayer, listing additional acts for which a postponement is granted, and providing other relief.

SECTION 1. PURPOSE

This revenue procedure extends the GUST¹ remedial amendment period under § 401(b) of the Code for qualified retirement plans. First, the revenue procedure extends the GUST remedial amendment period for all plans to February 28, 2002, if the period would otherwise end before then. Second, the revenue procedure provides an additional extension to June 30, 2002, for plans that were directly affected by the September 11, 2001, terrorist attack on the United States (the "Terrorist Attack"). Finally, the revenue procedure provides that in cases of substantial hardship resulting from the Terrorist Attack the Service may, in its discretion, grant additional extensions of the GUST remedial amendment period to particular plans up to December 31, 2002.

SECTION 2. BACKGROUND

.01 Under § 401(b), plan sponsors have a remedial amendment period in which to adopt plan amendments for GUST. The end of the GUST remedial amendment period is the deadline for making all GUST plan amendments and other plan amendments specifically enumerated in Rev. Proc. 99-23, 1999-1 C.B. 920. The GUST remedial amendment period also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

.02 Rev. Proc. 2000-27, 2000-26 I.R.B. 1272, provides that the GUST remedial amendment period for nongovernmental plans ends on the last day of the first plan year beginning on or after January 1, 2001. This is also the end of the remedial amendment period for the Tax Reform Act of 1986 (TRA '86) for nonelecting church plans. The GUST remedial amendment period for governmental plans, as defined in § 414(d), ends on the later of (i) the last day of the first plan year beginning on or after January 1, 2001, or (ii) the last day of the first plan year beginning on or after the "2000 legislative date" (that is, the 90th day after the opening of the first legislative session beginning after December 31, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously). This is also the end of the TRA '86 remedial amendment period for governmental plans.

.03 Rev. Proc. 2000-20, 2000-6 I.R.B. 553, as modified by Rev. Proc. 2000-27 and Notice 2001-42, 2001-30 I.R.B. 70, provides an extension of the GUST remedial amendment period for employers who, by the end of the GUST remedial amendment period (determined without regard to the extension), have adopted a pre-approved plan (that is, a master or prototype or volume submitter plan) or certified their intent to adopt such a plan. If the requirements for the extension are satisfied, the GUST remedial amendment period for the employer's plan will not end before the later of December 31, 2002, or the end of the 12th month beginning after the date on which the Service issues a GUST opinion or advisory letter for the pre-approved plan.

¹ "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

.04 Rev. Proc. 2001-6, 2001-1 I.R.B. 194, contains the Service's procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409 and 4975(e)(7) of the Code and the exempt status of related trusts or custodial accounts under § 501(a).

.05 Section 1.401(b)-1(f) of the Income Tax Regulations provides that, at his discretion, the Commissioner may extend the remedial amendment period or may allow a particular plan to be amended after the expiration of its remedial amendment period and any applicable extension of such period. In determining whether such an extension will be granted, the Commissioner shall consider, among other factors, whether substantial hardship to the employer would result if such an extension were not granted, whether such an extension is in the best interest of plan participants, and whether the granting of the extension is adverse to the interests of the government.

SECTION 3. GENERAL EXTENSION OF REMEDIAL AMENDMENT PERIOD TO FEBRUARY 28, 2002

.01 The GUST remedial amendment period is extended to February 28, 2002, if the period would otherwise end before then. This extension applies to all GUST plan amendments, including all those plan amendments specifically enumerated in Rev. Proc. 99-23. In addition, this extension applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause an existing plan to fail to be qualified.

.02 The TRA'86 remedial amendment period for governmental plans and nonelecting church plans is also extended to February 28, 2002, if the period would otherwise end before then.

.03 This extension also applies to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under Rev. Proc. 2000-20, as modified.

SECTION 4. EXTENSION OF REMEDIAL AMENDMENT PERIOD TO JUNE 30, 2002, FOR PLANS DIRECTLY AFFECTED BY THE TERRORIST ATTACK

.01 The extension of the remedial amendment period provided by this section applies only to plans directly affected by the Terrorist Attack, as defined in sections 4.02 and 4.03 of this revenue procedure.

.02 For purposes of the revenue procedure, a plan will be considered to be directly affected by the Terrorist Attack if any of the following were located at the time of the attack in the area of the New York City borough of Manhattan bounded on the north by 14th Street: the principal place of business of any employer that maintains the plan; the office of the plan or the plan administrator; the office of the primary recordkeeper serving the plan; or the office of an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan (or by the employer with respect to issues involving the plan). A plan will also be considered to be directly affected by the Terrorist Attack if any individual required under the terms of the plan or corporate rules to approve plan amendments, the plan administrator, or an attorney, enrolled actuary, certified public accountant or other advisor retained by the plan (or by the employer with respect to issues involving the plan) was injured or killed or is missing as a result of the Terrorist Attack.

.03 A plan sponsor of a plan that is not described in section 4.02 may ask the Service to designate the plan as directly affected by the Terrorist Attack if the plan sponsor's ability to amend the plan and file a determination letter application has been severely impaired as a direct result of the Terrorist Attack. Upon a showing of such directly related, severe impairment, as determined by the Service in its

discretion, the Service will designate the plan as directly affected by the Terrorist Attack. The plan sponsor's request should be sent to the following address:

Manager, EP Determinations
Attention: RAP Extension Coordinator
550 Main Street
Room 5106
Cincinnati, Ohio 45202

The request must be made by the later of December 31, 2001, or the 60th day preceding the end of the plan's GUST remedial amendment period (determined without regard to the extensions under this revenue procedure). The request must explain how the Terrorist Attack has directly and severely impaired the ability to amend the plan and file a determination letter application. The Service will not designate a plan as directly affected by the Terrorist Attack on account of delays experienced by a significant segment of the nation, such as disruptions in transportation or mail delivery and delays associated with diversion of resources to other activities as a result of the Terrorist Attack. If the request is denied, the GUST remedial amendment period for the plan will end on the later of the date it would otherwise end or the date that is one month after the date of the letter denying the request.

.04 The GUST remedial amendment period for directly affected plans is extended to June 30, 2002, if the period would otherwise end before then.

.05 This extension of the GUST remedial amendment period applies to all GUST plan amendments of directly affected plans, including all those plan amendments specifically enumerated in Rev. Proc. 99-23. In addition, this extension applies with respect to all disqualifying provisions of directly affected new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, that would cause a directly affected existing plan to fail to be qualified.

.06 The TRA'86 remedial amendment period for directly affected governmental plans and nonelecting church plans is also extended to June 30, 2002, if the period would otherwise end before then.

.07 Plan sponsors who file determination letter applications utilizing the extension provided by this section must include with their application an attachment, labeled "September 11, 2001 Terrorist Attack," which describes how the plan meets the criteria in section 4.02 (for example, that at the time of the Terrorist Attack the office of the plan administrator was located in the area of Manhattan bounded on the north by 14th Street). This label must be on the attachment and not on the envelope. If the Service has designated the plan as directly affected in response to a request submitted under section 4.03, a copy of the Service's letter so designating the plan should be attached to the determination letter application in place of the attachment.

.08 A plan sponsor of a directly affected plan described in section 4.02 or 4.03 who can show that it will not be able to amend the plan for GUST or file a determination letter application within the plan's GUST remedial amendment period (including the extension under section 4.04) without incurring substantial hardship directly related to the Terrorist Attack may request a further extension under § 1.401(b)-1(f). The request should be addressed to the Manager, EP Determinations, at the address in section 4.03 and must be made by the later of April 30, 2002, or the 60th day preceding the end of the plan's GUST remedial amendment period. A request made under this section 4.08 may be combined with a request made under section 4.03, provided, however, that the combined request is made by the later of December 31, 2001, or the 60th day preceding the end of the plan's GUST remedial amendment period (determined without regard to the extensions under this revenue procedure). A request under this section

4.08 must clearly demonstrate the hardship that will be incurred without a further extension. For example, if the extension is needed because of delays in obtaining documents and information needed to amend the plan, the request must include a description of such documents and information, an explanation of how these delays are directly related to the Terrorist Attack, an explanation of steps taken to date to amend the plan, and the requested extension date, including specific justification for the extension date. In no event will an extension beyond December 31, 2002, be granted. If the request for a further extension is denied, the GUST remedial amendment period for the plan will end on the later of the date on which it would otherwise end (including the extension under section 4.04) or the date that is one month after the date of the letter denying the request.

.09 This extension does not apply to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under Rev. Proc. 2000-20, as modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective December 3, 2001.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 2000-20, 2000-27 and 2001-6 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 9:30 p.m. Eastern Time, Monday through Friday. Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free number).

Note: This revenue procedure will appear in IRB 2001-49 on December 3, 2001.

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